

### ***Remarks***

Reconsideration of this Application is respectfully requested.

Claims 1 and 3-20 are pending in the application, with claim 1 being the independent claims.

Claims 1 and 3-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,656,122 to Davidson et al. (hereinafter "Davidson") or U.S. Patent No. 7,104,958 to Crutchfield et al. (hereinafter "Crutchfield") in view of U.S. Patent No. 6,254,628 to Wallace (hereinafter "Wallace.")

Claims 1 and 3-20 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of Davidson in view of Wallace.

Based on the following Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and they be withdrawn.

**I. *Claims 1 and 3-20 patentable over Davidson or Crutchfield in view of Wallace.***

Claims 1 and 3-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davidson or Crutchfield in view of Wallace. For the following reasons, this rejection is respectfully traversed.

Primary references Davidson or Crutchfield relied upon in the obviousness rejection only qualify as prior art under 35 U.S.C. § 102(e). Davidson, Crutchfield, and the present invention were all commonly assigned to New Health Science, Inc at the time of invention. Thus, according to 35 U.S.C. § 103(c), Davidson and Crutchfield are not available as prior art in 103(a) obviousness rejections.

Therefore, Applicants respectfully request that the Examiner withdraw the rejection of claims 1 and 3-20.

**II. *Double patenting overcome by terminal disclaimer.***

Claims 1 and 3-20 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of Davidson in view of Wallace. In response, a

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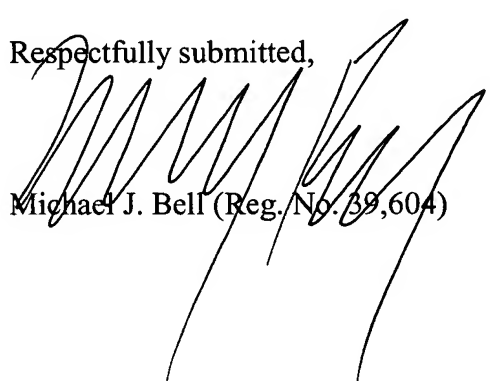
terminal disclaimer has been filed pursuant to 37 CFR 1.321(c). Thus, the Applicants respectfully request that the Examiner withdraw the double patenting rejection.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this reply is respectfully requested.

Respectfully submitted,

  
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